



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REQUEST BY PTC-220, LLC FOR WAIVER AND EXTENSION OF TIME TO CONSTRUCT AND A REQUEST FOR OTHER RULE WAIVERS REGARDING PART 90 220 MHZ LICENSES

WT Docket No. 08-256

Comment Date: January 23, 2009

Reply Comment Date: February 9, 2009

By this Public Notice, the Wireless Telecommunications Bureau (Bureau) seeks comment on a request for waiver and extension of time to construct and a request for other rule waivers filed by PTC-220, LLC (PTC-220) for twelve Part 90 220 MHz licenses (Waiver Request).¹ Specifically, PTC-220 requests a waiver of sections 90.767(a) and 90.769(a) of the Commission's rules² to extend the ten-year construction deadline for its licenses by five years. In addition, PTC-220 requests a waiver of certain other 220 MHz service rules.³

¹ See FCC File Nos. 0003634433-38; 0003634442-48; 0003634450; 0003634452-54; 0003634456; 0003634458; 0003634459; 0003634461; 0003634463; 0003634465 and 0003634466. PTC-220's Waiver Request is attached to each file number in the Universal Licensing System (ULS).

² Generally, section 90.767(a) states that a 220 MHz Economic Area (EA) or regional (REAG) licensee must construct a sufficient number of base stations to provide coverage to at least two-thirds of the population of its license area within ten years of the grant of its initial authorization. Alternatively, a licensee may elect to demonstrate that, no later than ten years after the initial grant of its license, it provides substantial service to its licensed area. 47 C.F.R. § 90.767(a). Generally, section 90.769(a) states that a 220 MHz nationwide licensee must construct a sufficient number of base stations to provide coverage to a composite area of at least 1,500,000 square kilometers or 75 percent of the United States population within ten years of the issuance of its initial license. Alternatively, a licensee may elect to demonstrate that, no later than ten years after the initial grant of its license, it provides substantial service to its licensed area. 47 C.F.R. § 90.769(a).

³ In addition to relief from the applicable construction deadlines, PTC-220 requests a waiver for one or more of its licenses regarding: (1) section 90.743 (requiring the filing of a showing accompanying a renewal application which demonstrates why a renewal expectancy is warranted); (2) 90.715 (limiting base station operation to the 220-221 MHz band and mobile/control station operation to the 221-222 MHz band - PTC-220 seeks to operate base/mobiles in either the 220-221 MHz or 221-222 MHz bands); (3) 90.713 and 90.717 (limiting use of Phase I nationwide licenses to commercial use - PTC-220 seeks non-commercial operation to enhance safety and efficiency in locomotive operations); and (4) 90.735 (requiring non-nationwide systems to transmit station identification information, while exempting nationwide systems - PTC-220 seeks to operate an integrated system and seeks a waiver of station identification requirement for its non-nationwide licenses). See generally Waiver Request.

PTC-220 is a joint venture of Ekanet, Inc. (a subsidiary of Union Pacific Corporation) and Norfolk Southern Railway Company (a subsidiary of Norfolk Southern Corporation).⁴ In June 2008, PTC-220 acquired and assumed control of the licenses subject to its Waiver Request as part of PTC-220's plan to develop and introduce narrowband technology, including the deployment of positive train control technology.⁵ PTC-220 describes positive train technology as an advanced system designed to monitor train activity, prevent train collisions and enhance public safety.⁶ Furthermore, PTC-220 states that under a positive train control system, a radio device onboard a train transmits and receives information regarding that train's location and related data, along with additional information regarding where the train may travel safely.⁷ In support of its waiver, PTC cites to the Rail Safety Improvement Act of 2008 enacted October 18, 2008, which mandates development and implementation of positive train control on Class I railroads by December 31, 2015.⁸ PTC also argues that it only recently acquired the licenses in the secondary market and that it will have great difficulty meeting the impending 2009 construction deadlines that are associated with all but one of its licenses. PTC-220's request for other rule waivers is also related to its proposed deployment of its positive train control system.

Interested parties may file comments on PTC's Waiver Request on or before January 23, 2009. Parties interested in submitting reply comments must do so on or before February 9, 2009. All filings concerning matters referenced in this Public Notice should refer to WT Docket 08-256. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS): <http://www.fcc.gov/cgb/ecfs/>, (2) the Federal Government's eRulemaking Portal: <http://www.regulations.gov>, or (3) paper copies.⁹

- ECFS Filers: If multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full names, U.S. Postal Service mailing addresses, and the applicable docket or rulemaking number. Interested parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message: "get form." A sample form and directions will be sent in response.
- eRulemaking Filers: Filers should follow the instructions provided on the website for submitting comments.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

⁴ Waiver Request at 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 4. See also Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, § 104, 122 Stat. 4848, ____ (2008).

⁹ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

The applications and Waiver Request can be accessed electronically via the Commission's Universal Licensing System, <http://wireless.fcc.gov/uls>. Copies of this Public Notice, and PTC's Waiver Request, will be posted on the web at http://gulfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi and will be available for public inspection and duplication during regular business hours in the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Copies of the comments and other filings in this docket also may be obtained from the Commission's duplicating contractor, Best Copy and Printing, Inc. in person at 445 12th Street, SW, Room CY-B402, Washington, DC 20554, via telephone at (202) 488-5300 or (800) 378-3160, via facsimile at (202) 488-5563, or via e-mail at fcc@bcpweb.com. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

This proceeding is designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁰ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.¹¹ Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules.¹²

For further information, contact James Brown, Mobility Division, Wireless Telecommunications Bureau at (717) 338-2621 or via email at James.Brown@fcc.gov.

By the Chief, Mobility Division, Wireless Telecommunications Bureau.

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¹⁰ 47 C.F.R. §§ 1.1200(a), 1.1206.

¹¹ 47 C.F.R. § 1.1206(b).

¹² *Id.*